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7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation  
Against:

13 **DONALD EDWARD NEAL**  
P.O. Box 494790  
14 Redding, California 96049

15 Registered Nurse License No. 457907

16 Respondent.

Case No. 2004-332

**PETITION TO REVOKE  
PROBATION**

17 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Petition to Revoke Probation solely in her official  
20 capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of  
21 Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about August 31, 1990, the Board issued Registered Nurse License  
24 No. 457907 to Donald Edward Neal ("Respondent"). The license will expire on February 28,  
25 2010, unless renewed.

26 **Prior Discipline**

27 3. Effective April 21, 2005, in a disciplinary action entitled "In the Matter of  
28 the Accusation Against Donald Edward Neal," Accusation No. 2004-332, the Board of

1 Registered Nursing issued a Decision and Order, attached hereto as **Exhibit A** and incorporated  
2 herein by reference, in which Respondent's Registered Nurse License No. 457907 was revoked.  
3 The revocation was stayed and Respondent was placed on probation for three (3) years with  
4 terms and conditions; however, pursuant to Conditions 6 and 11, the Board extended  
5 Respondent's probation one (1) year.

#### 6 JURISDICTION

7 4. Section 2750 of the Business and Professions Code ("Code") provides, in  
8 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
9 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code  
10 section 2750) of the Nursing Practice Act.

11 5. Section 2764 of the Code provides, in pertinent part, that the expiration of  
12 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
13 against the licensee or to render a decision imposing discipline on the license. Under Code  
14 section 2811, subdivision (b), the Board may renew an expired license at any time within eight  
15 years after the expiration.

16 6. Code section 118, subdivision (b), provides, in pertinent part, that the  
17 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
18 action during the period within which the license may be renewed, restored, reissued or  
19 reinstated.

20 7. Grounds exist for revoking the probation and reimposing the order of  
21 revocation of Respondent's Registered Nurse License No. 457907. Condition 12 of the Decision  
22 and Order states:

23 If Respondent violates the conditions of his probation, the Board after  
24 giving the Respondent notice and an opportunity to be heard, may set aside the  
25 stay order and impose the stayed discipline (revocation) of the Respondent's  
license.

26 If during the period of probation, an Accusation or Petition to Revoke  
27 Probation has been filed against Respondent's license or the Attorney General's  
28 Office has been requested to prepare an Accusation or Petition to Revoke  
Probation against Respondent's license, the probationary period shall  
automatically be extended and shall not expire until the Accusation or Petition to  
Revoke Probation has been acted upon by the Board.

8. Respondent has violated the Probation Program, as set forth in the following paragraphs:

**FIRST CAUSE TO REVOKE PROBATION**

**(Failure to Submit Written Reports)**

9. At all times after the effective date of Respondent's probation, Condition 5 stated:

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this Decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are that Respondent failed to submit quarterly reports in a timely fashion for the following quarters:

Quarter	Due Date	Received
January-March 2007	April 7, 2007	February 25, 2008
April-June 2007	July 7, 2007	February 25, 2008
July-September 2007	October 7, 2007	February 25, 2008
October-December 2007	January 7, 2008	February 25, 2008

Further, Respondent failed to submit quarterly reports for the following quarters:

January-March 2008	April 7, 2008
April-June 2008	July 7, 2008
July-September 2008	October 7, 2008

**SECOND CAUSE TO REVOKE PROBATION**

**(Failure to Function as a Registered Nurse)**

11. At all times after the effective date of Respondent's probation, Condition 6 stated:

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

1 For purposes of compliance with the section, "engage in the practice of  
2 registered nursing" may include, when approved by the Board, volunteer work as  
3 a registered nurse, or work in any nondirect patient care position that requires  
4 licensure as a registered nurse.

5 The Board may require that advanced practice nurses engage in advanced  
6 practice nursing for a minimum of 24 hours per week for 6 consecutive months or  
7 as determined by the Board.

8 If respondent has not complied with this condition during the probationary  
9 term, and the respondent has presented sufficient documentation of his good faith  
10 efforts to comply with this condition, and if no other conditions have been  
11 violated, the Board, in its discretion, may grant an extension of the respondent's  
12 probation period up to one year without further hearing in order to comply with  
13 this condition. During the one year extension, all original conditions of probation  
14 shall apply.

15 12. Respondent's probation is subject to revocation because he failed to  
16 comply with Probation Condition 6, referenced above. The facts and circumstances regarding  
17 this violation are that Respondent failed to work in a Board approved registered nurse position  
18 for a minimum of 24 hours per week for 6 consecutive months.

### 19 **THIRD CAUSE TO REVOKE PROBATION**

#### 20 **(Failure to Complete Nursing Courses)**

21 13. At all times after the effective date of Respondent's probation, Condition  
22 10 stated:

23 Respondent, at his own expense, shall enroll and successfully complete a  
24 course(s) relevant to the practice of registered nursing no later than six months  
25 prior to the end of his probationary term.

26 Respondent shall obtain prior approval from the Board before enrolling in  
27 the course(s). Respondent shall submit to the Board the original transcripts or  
28 certificates of completion for the above required course(s). The Board shall return  
the original documents to respondent after photocopying them for its records.

14. Respondent's probation is subject to revocation because he failed to  
comply with Probation Condition 10, referenced above. The facts and circumstances regarding  
this violation are that Respondent failed to complete the following required assigned courses:

Nursing Diagnosis	4 hours
Pathophysiology	4 hours
Pharmacology	4 hours
Professional Ethics	4 hours
Legal Aspects of Nursing	4 hours

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1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Failure to Pay Costs)**

3 15. At all times after the effective date of Respondent's probation, Condition  
4 11 stated:

5 Respondent shall pay to the Board costs associated with its investigation  
6 and prosecution pursuant to Business and Professions Code Section 125.3 in the  
7 amount of \$8,500. Respondent shall be permitted to pay these costs in a payment  
8 plan approved by the Board, with payments to be complete no later than three  
9 months prior to the end of the probation term.

10 If respondent has not complied with this condition during the probationary  
11 term, and respondent has presented sufficient documentation of his good faith  
12 efforts to comply with this condition, and if no other conditions have been  
13 violated, the Board, in its discretion, may grant an extension of the respondent's  
14 probation period up to one year without further hearing in order to comply with  
15 this condition. During the one year extension, all original conditions of probation  
16 will apply.

17 16. Respondent's probation is subject to revocation because he failed to  
18 comply with Probation Condition 11, referenced above. The facts and circumstances regarding  
19 this violation are that Respondent failed to pay any portion of the \$8,500 in costs associated with  
20 this case.

21 **FIFTH CAUSE TO REVOKE PROBATION**

22 **(Failure to Comply with the Probation Program)**

23 17. At all times after the effective date of Respondent's probation, Condition 2  
24 stated, in part:

25 Respondent shall fully comply with the terms and conditions of the  
26 Probation Program established by the Board and cooperate with representatives of  
27 the Board in its monitoring and investigation of the Respondent's compliance  
28 with the Probation Program. Respondent shall inform the Board in writing within  
no more than 15 days of any address change and shall at all times maintain an  
active, current license status with the Board, including during any period of  
suspension.

18 18. Respondent's probation is subject to revocation because he failed to  
19 comply with Probation Condition 2, referenced above. The facts and circumstances regarding  
20 this violation are that Respondent failed to comply with the Board's Probation Program, as set  
21 forth in paragraphs 10, 12, 14, and 16, above.


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**PRAYER**

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2004-332 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 457907 issued to Donald Edward Neal; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/17/09

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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**Exhibit A**

**Decision and Order**

**Board of Registered Nursing Case No. 2004-332**

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Donald E. Neal  
3210 Granite Springs Road  
Coulterville, CA 95311

Case No. 2004-332

Registered Nurse License No. 457907

Respondent

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on April 21, 2005.

IT IS SO ORDERED March 21, 2005.

*Sandra R. Erickson*

President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California



1 BILL LOCKYER, Attorney General  
of the State of California  
2 GLORIA A. BARRIOS, State Bar No. 94811  
Deputy Attorney General  
3 California Department of Justice  
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Telephone: (510) 622-2144  
5 Facsimile: (510) 622-2121  
E-mail: gloria.barrios@doj.ca.gov  
6

7 Attorneys for Complainant  
8  
9

10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.: 2004-332

13 DONALD EDWARD NEAL  
14 3210 Granite Springs Road  
Coulterville, CA 95311

OAH No.: N2004060310

15 Registered License No. 457907

**STIPULATED SETTLEMENT  
AND DISCIPLINARY ORDER**

16 Respondent.  
17

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties  
19 to the above-entitled proceedings that the following matters are true:  
20

**PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of the  
22 Board of Registered Nursing. She brought this action solely in her official capacity and is  
23 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Gloria  
24 A. Barrios, Deputy Attorney General.  
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2. Respondent Donald Edward Neal, R.N., (Respondent) is represented in this proceeding by attorney James Jay Seltzer, Esq., whose address is 3300 Powell Street, Suite 201, Emeryville, CA 94608 and representative Dennis Kromann, 906 Copper Way, Vacaville, CA 95687.

3. On or about August 31, 1990, the Board of Registered Nursing issued Registered Nurse Case License No. 457907 to Respondent. The License was in full force and effect at all times relevant to the charges brought in Accusation Case No. 2004-332 and will expire on February 28, 2006, unless renewed.

## JURISDICTION

4. Accusation Case No. 2004-332 was filed before the Board of Registered Nursing (Board), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 1, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation Case No. 2004-332 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel and representative, and understands the charges and allegations in Accusation Case No. 2004-332. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel and representative at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Respondent understands that the charges and allegations in Accusation Case No. 2004-332, if proven at hearing, would constitute cause for imposing discipline upon his registered nurse license.

9. Respondent agrees that his Registered Nurse License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1           3.     **Report in Person.**

2                 Respondent, during the period of probation, shall appear in person for  
3 interviews/meetings as directed by the Board or its designated representatives.

4           4.     **Residency, Practice or Licensure Outside the State.**

5                 Periods of residency or practice as a registered nurse outside of California shall  
6 not apply to toward a reduction of this probation time period. Respondent's probation is  
7 tolled, if and when he resides outside of California. Respondent must provide written notice to  
8 the Board within 15 days of any change of residency or practice outside the state, and within 30  
9 days prior to re-establishing residency or returning to practice in this state.

10                Respondent shall provide a list of all states and territories where he has ever been  
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further  
12 provide information regarding the status of each license and any other changes in such license  
13 status during the term of probation. Respondent shall inform the Board if he applies for or  
14 obtains a new nursing license during the term of probation.

15           5.     **Submit Written Reports.**

16                Respondent, during the period of probation, shall submit or caused to be  
17 submitted such written reports/declarations and verification of actions under penalty of perjury,  
18 as required by the Board. These reports/declarations shall contain statements relative to  
19 Respondent's compliance with all the conditions of the Board's Probation Program. Respondent  
20 shall immediately execute all release of information forms as may be required by the Board or its  
21 representatives.

22                Respondent shall provide a copy of this Decision to the nursing regulatory agency  
23 in every state and territory in which he has a registered nurse license.

24           6.     **Function as a Registered Nurse.**

25                Respondent, during the period of probation, shall engage in the practice of  
26 registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or  
27 as determined by the Board.

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1 For purposes of compliance with the section, "engage in the practice of registered  
2 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
3 work in any non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice  
5 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the  
6 Board.

7 If respondent has not complied with this condition during the probationary term,  
8 and the respondent has presented sufficient documentation of his good faith efforts to comply with  
9 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
10 grant an extension of the respondent's probation period up to one year without further hearing in  
11 order to comply with this condition. During the one year extension, all original conditions of  
12 probation shall apply.

13 7. **Employment Approval and Reporting Requirements**

14 Respondent shall obtain prior approval from the Board before commencing or  
15 continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to  
16 be submitted to the Board all performance evaluations and other employment related reports as a  
17 registered nurse upon request of the Board.

18 Respondent shall provide a copy of this decision to his employer and immediate  
19 supervisors prior to commencement of any nursing or other health care related employment.

20 In addition to the above, respondent shall notify the Board in writing within  
21 seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing,  
22 or other health care related employment with a full explanation of the circumstances surrounding  
23 the termination or separation.

24 8. **Supervision**

25 Respondent shall obtain prior approval from the Board regarding respondent's  
26 level of supervision and/or collaboration before commencing or continuing any employment as a  
27 registered nurse, or education and training that includes patient care.

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1 Respondent shall practice only under the direct supervision of a registered nurse in  
2 good standing (no current discipline) with the Board of Registered Nursing, unless alternative  
3 methods of supervision/or collaboration (e.g., with an advanced practice or physician) are  
4 approved.

5 Respondent's level of supervision and/or collaboration may include, but is not  
6 limited to the following:

7 (a) Maximum - The individual providing supervision and/or collaboration is  
8 present in the patient care area or in any other work setting at all times.

9 (b) Moderate - The individual providing supervision and/or collaboration is  
10 present in the patient care unit or in any other work setting at least half the hours Respondent  
11 works.

12 (c) Minimum - The individual providing supervision and/or collaboration has  
13 person-to-person communication with Respondent at least twice during each shift worked.

14 (d) Home Health Care - If Respondent is approved to work in the home health  
15 care setting, the individual providing supervision and/or collaboration shall have person-to-person  
16 communication with Respondent as required by the Board each work day. Respondent shall  
17 maintain telephone or other telecommunication contact with the individual providing supervision  
18 and/or collaboration as required by the Board during each work day. The individual providing  
19 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
20 patients' homes visited by the respondent with or without respondent present.

21 9. **Employment Limitations.**

22 Respondent shall not work for a nurse's registry, in any private duty position as a  
23 registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house  
24 nursing pool.

25 Respondent shall not work for a licensed home health agency as a visiting nurse  
26 unless the registered nursing supervision and other protections for home visits have been  
27 approved by the Board. Respondent shall not work in any other registered nursing occupation  
28 where home visits are required.

1 Respondent shall not work in any health care setting as a supervisor of registered  
2 nurses. However, Respondent may continue to work in his current capacity and position with  
3 Contra Costa County Health Services at the Martinez Detention Facility. Should he change  
4 employment with this agency or change his employment, further approval must be granted by the  
5 Board. The Board may additionally restrict respondent from supervising licensed vocational  
6 nurses and/or unlicensed assistive personnel on a case-by-case basis.

7 Respondent shall not work as a faculty member in an approved school of nursing  
8 or as an instructor in a Board approved continuing education program.

9 Respondent shall work only on a regularly assigned, identified and predetermined  
10 worksite(s) and shall not work in a float capacity.

11 If Respondent is working or intends to work in excess of 40 hours per week, the  
12 Board may request documentation to determine whether there should be restriction on the hours of  
13 work.

14 10. **Complete a Nursing Course(s).**

15 Respondent, at his own expense, shall enroll and successfully complete a course(s)  
16 relevant to the practice of registered nursing no later than six months prior to the end of his  
17 probationary term.

18 Respondent shall obtain prior approval from the Board before enrolling in the  
19 course(s). Respondent shall submit to the Board the original transcripts or certificates of  
20 completion for the above required course(s). The Board shall return the original documents to  
21 respondent after photocopying them for its records.

22 11. **Cost Recovery.**

23 Respondent shall pay to the Board costs associated with its investigation and  
24 prosecution pursuant to Business and Professions Code Section 125.3 in the amount of \$ 8,  
25 500.00. Respondent shall be permitted to pay these costs in payment plan approved by the Board,  
26 with payments to be complete no later than three months prior to the end of the probation term.

27 If Respondent has not complied with this condition during the probationary term,  
28 and Respondent has presented sufficient documentation of his good faith efforts to comply with



1 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
2 grant an extension of the Respondent's probation period up to one year without further hearing in  
3 order to comply with this condition. During the one year extension, all original conditions of  
4 probation will apply.

5       12.     **Violation of Probation.**

6             If Respondent violates the conditions of his probation, the Board, after giving  
7 Respondent notice and the opportunity to be heard, may set aside the stay order and impose the  
8 stayed discipline (revocation) of the Respondent's license.

9             If during the period of probation, an Accusation or Petition to Revoke Probation  
10 has been filed against Respondent's license or the Attorney General's Office has been requested to  
11 prepare an Accusation or Petition to Revoke Probation against Respondent's license, the  
12 probationary period shall automatically be extended and shall not expire until the Accusation or  
13 Petition to Revoke Probation has been acted upon by the Board.

14       13.     **License Surrender.**

15             During Respondent's term of probation, if he ceases practicing due to retirement,  
16 health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may  
17 surrender his license to the Board. The Board reserves the right to evaluate the Respondent's  
18 request and to exercise its discretion whether to grant the request, or to take any other action  
19 deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal  
20 acceptance of the tendered license, Respondent will no longer be subject to the terms and  
21 conditions of probation.

22             Surrender of Respondent's license shall be considered a disciplinary action and  
23 shall become part of Respondent's license history with the Board. A registered nurse whose  
24 license has been surrendered may petition the Board for reinstatement no sooner than the  
25 following minimum periods from the effective date of the disciplinary decision:


26             (1)     Two years for reinstatement of a license that was surrendered for any  
27 reason other than a mental or physical illness; or

28             (2)     One year for a license surrendered for a mental or physical illness.

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DATED: 9/10/04  
Donald Edward Neal, RN  
DONALD EDWARD NEAL, R.N.  
Respondent

DATED: 9/10/04

  
JAMES JAY SELTZER, ESQ.  
Attorney for Respondent

DATED: 9/10/04

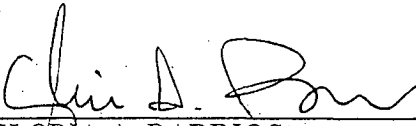
Dennis Kromann  
DENNIS KROMANN  
Representative for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing.

DATED: 9/10/04

BILL LOCKYER, Attorney General  
of the State of California

  
\_\_\_\_\_  
GLORIA A. BARRIOS  
Deputy Attorney General

Attorneys for Complainant

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of the State of California  
2 GLORIA A. BARRIOS, State Bar No. 94811  
Deputy Attorney General  
3 California Department of Justice  
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7 Attorneys for Complainant

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2004-332

13 DONALD EDWARD NEAL  
3210 Granite Springs Road  
Coulterville, CA 95311

ACCUSATION

14 Registered Nurse License No. 457907

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely  
20 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
21 of Consumer Affairs.

22 2. On or about August 31, 1990, the Board of Registered Nursing issued Registered  
23 Nurse License No. 457907 to Donald Edward Neal (Respondent). The Registered Nurse License  
24 will expire on February 28, 2006, unless renewed.

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**JURISDICTION**

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

7. Title 16, California Code of Regulations section 1442 provides, in pertinent part, that as used in section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

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8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**FIRST CAUSE FOR DISCIPLINE**  
**Bus. & Prof. Code §2761(a)(1)**  
**(Gross Negligence)**

9. Respondent is subject to disciplinary action under Code section 2761(a)(1) in that respondent was grossly negligent within the meaning of Title 16, California Code of Regulations section 1442, when he failed to properly treat Patient KJ. Specifically, respondent was grossly negligent in that he failed to appropriately assess and notify a physician of a patient in severe chest pain who stated it felt like something ruptured in his chest, administered medication to said patient without a physician's order, failed to attend to the patient's complaint of increased pain after the administration of the medication, and failed to provide any ongoing assessment of the patient overnight, thereby delaying treatment and placing the patient at serious risk of death. The circumstances are set forth hereinafter.

10. Respondent was employed as a Registered Nurse at California State Prison Solano in Vacaville, California, during the relevant time period.

11. On or about January 4, 2001, Patient KJ (a prison inmate) presented himself to the prison infirmary, following the evening meal, where he was assessed by the respondent. Patient KJ told respondent that he was having difficulty swallowing, experiencing painful breathing, felt severe pain in his chest and it felt like something had "ruptured."

12. Respondent took Patient KJ's vital signs and did an EKG. He questioned Patient KJ about the patient's possible sources of stress and anxiety. He gave him some Maalox, which the patient stated made the pain worse, gave him a pass to see the doctor in the morning, and sent him back to his cell.

13. On or about January 4, 2001, Patient KJ returned to his cell where he spent the night in severe pain and vomited blood.

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1 14. Respondent failed to properly treat Patient KJ as specifically set forth hereinafter.

2 (a) Respondent should have referred Patient KJ to a physician  
3 immediately.

4 (b) Patient KJ's elevated pulse rate indicated a serious problem, which  
5 should have prompted a complete assessment, including x-rays,  
6 and physician referral.

7 (c) Respondent should have listened to Patient KJ's lungs based on the  
8 patient's complaint.

9 (d) Respondent's administration of Maalox without a physician's order  
10 exceeded respondent's scope of practice.

11 (e) The fact that the administration of Maalox worsened Patient KJ's  
12 pain should have prompted respondent to call a physician.

13 (f) Respondent failed to identify the cause of Patient KJ's pain, which  
14 should have, prompted him to consult with the physician on call.

15 (g) Respondent failed to provide any ongoing assessment of the patient  
16 and, instead, allowed him to return to his cell overnight.

17 (h) Respondent failed to document the situs of Patient KJ's pain.

18 (i) Patient KJ's condition was life threatening and respondent's failure  
19 to act placed the patient's life in jeopardy.

20 15. On or about January 5, 2001, Patient KJ returned to the prison infirmary, where he  
21 was examined by a physician and was transferred to the Queen of the Valley Hospital  
22 for emergency treatment. Patient KJ was diagnosed with a ruptured esophagus and underwent  
23 surgery. It was determined that there was a six centimeter tear in the mid-thoracic area of  
24 Patient KJ's esophagus and that the tear was approximately 24 hours old. Additionally,  
25 500 cubic centimeters of purulent material was evacuated from Patient KJ's chest.

26 16. Between January 5, and February 27, 2001, Patient KJ was hospitalized at Queen  
27 of the Valley Hospital for treatment of his condition and its complications.

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